

1210 pm

SUM-100

SUMMONS (CITACIÓN JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Synchrony Bank

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Carole Eaton-Spring

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED

2016 MAY -3 A 10:40

DAVID H. YAMASAKI, Chief Executive Officer
County of Santa Clara, California

S. ACKARD

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara Superior Court
191 N. First Street, San Jose, CA 95113

DAVID H. YAMASAKI
Chief Executive Officer, Clerk

CASE NUMBER:
(Número del Caso):

16CV294629

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Scott Johnson (SBN 287182); Sagaria Law, P.C. 2033 Gateway Place, 5th Floor San Jose CA 95110

DATE: May-2-2016
(Fecha)

MAY 03 2016

Clerk, by
(Secretario)

S. ACKARD

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

SCOTT J. SAGARIA (BAR # 217981)
ELLIOT W. GALE (BAR #263326)
JOE B. ANGELO (BAR #268542)
SCOTT M. JOHNSON (BAR #287182)
SAGARIA LAW, P.C.
2033 Gateway Place, 5th Floor
San Jose, CA 95110
408-279-2288 ph
408-279-2299 fax

Attorneys for Plaintiff

ENDORSED

2016 MAY -3 A 10: 40

David H. Thomas, Clerk of the Superior Court
County of Santa Clara, California

By: S. ACKARD
Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA – LIMITED CIVIL

CASE NO.

16CV294629

Carole Eaton-Spring,

Plaintiff,

v.

Synchrony Bank and DOES 1 through 100
inclusive,

Defendants.

PLAINTIFF'S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act
3. Demand Does Not Exceed \$10,000

COMES NOW Plaintiff Carole Eaton-Spring, an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter "Rosenthal Act"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 14 U.S.C. §227, *et seq.* (hereinafter "TCPA"), which prohibits the use of automated dialing equipment when making calls to consumers.

2. Plaintiff brings this action against Defendant Synchrony Bank (hereinafter "Synchrony") for its abusive and outrageous conduct in connection with debt collection activity.

3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following findings and purpose in creating the Rosenthal Act:

(a)(1) The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers.

(2) There is need to ensure that debt collectors and debtors exercise their responsibilities to another with fairness and honesty and due regard or the rights of the other.

(b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts, as specified in this title.

4. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

5. The TCPA was designed to prevent calls like the ones described herein, and to protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers a choice as to how corporate entities may contact them and to prevent the nuisance associated with automated or prerecorded calls.

JURISDICTION & VENUE

6. This Court has jurisdiction pursuant to California Civil Procedure Code §410.10.

7. This venue is proper pursuant to California Civil Procedure Code § 395.5.

GENERAL ALLEGATIONS

8. Plaintiff Carole Eaton-Spring (hereinafter "Plaintiff") is an individual residing in the state of California, and is a "debtor" as defined by Cal. Civ. Code §1788.2(g).

9. At all relevant times herein, Defendant Synchrony Bank was a company engaged, by the use of mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a "consumer debt," as defined by Cal. Civ. Code §1788.2(f).

1 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
2 Civ. Code §1788.2(c)

3 11. Plaintiff had taken out several unsecured loans with Defendant Synchrony dating back
4 to at least 2008.

5 12. The loan Plaintiff took from Defendant Synchrony was extended primarily for
6 personal, family or household purposes and is therefore a “debt” as that term is defined by the
7 Calif. Civil Code § 1788.2(d) of the Rosenthal Act.

8 13. Defendant Synchrony has been attempting to collect on a debt that originated from
9 monetary credit that was extended primarily for personal, family, or household purposes, and
10 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §
11 1788.2(3) of the Rosenthal Act.

12 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
13 Synchrony arising from what Plaintiff is informed and believes was a consumer credit
14 transaction, the money allegedly owed was a “consumer debt” within the meaning of
15 California Civil Code § 1788.2(f) of the Rosenthal Act.

16 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
17 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
18 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
19 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
20 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
21 of the Rosenthal Act.

22 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
23 accounts.

24 17. Plaintiff began making payments on the loan before she became financially unable to
25 keep up with the monthly payments due to the high interest rate that was associated with the
26 loan from Defendant Synchrony.

27 18. Defendant Synchrony began contacting Plaintiff in January of 2016 to inquire about
28 the status of the loan and to collect on the payments that were no longer being made.

19. Plaintiff retained counsel to assist in dealing with Synchrony’s debt and to seek some
type of financial relief.

20. Counsel for Plaintiff sent Defendant Synchrony a letter confirming representation of Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all calls/letters/collection efforts were to no longer be directed at Plaintiff.

21. Defendant Synchrony continued to contact Plaintiff between approximately February 18, 2016 – present; the type of contact was through multiple daily phone calls to Plaintiff.

22. Plaintiff was contacted several times a day nearly every day regarding non-payment of the debt owed to Synchrony despite Synchrony being notified that Plaintiff had retained counsel to deal specifically with the debt owed to Synchrony.

23. Synchrony's calls were frequent in nature and continued despite receiving written confirmation that Plaintiff was represented by an attorney.

FIRST CAUSE OF ACTION
(Violation of the Rosenthal Act)
(Cal. Civ. Code §§ 1788-1788.32)
(Against Defendants and Does 1-100)

24. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

25. Plaintiff provided written notice that he was represented by sending Defendant a letter with the name, address, and contact information of his attorney and informed Defendant that she was represented.

26. Defendant continued to call and attempt to make contact with Plaintiff despite receiving notice of representation and being informed that Plaintiff had retained counsel in an effort to deal with the debt that was owed to Defendant.

27. The calls and communications made by Defendant to Plaintiff were not related to statements of Plaintiff's account and were attempts to collect a debt.

28. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving notice that Plaintiff had retained an attorney.

SECOND CAUSE OF ACTION
(Violation of the TCPA)
(47 USC § 227)
(Against Defendants and Does 1-100)

29. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

1 30. Since at least about March 29, 2016 Defendant started Plaintiff's cellular telephone
2 requesting that payment be made on the accounts Plaintiff held with Defendant.

3 31. Defendant would contact Plaintiff several times each day regarding payment on the
4 accounts.

5 32. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver
6 the collection messages without Plaintiff's prior express consent.

7 33. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing
8 system" as defined by 47 U.S.C. §227(a)(1).

9 34. These calls were made to Plaintiff's cellular telephone and were not calls for an
10 emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

11 35. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment as follows:

- 14 a. An award of actual damages pursuant to California Civil Code §1788.30(a), as
15 will be proven at trial, which are cumulative and in addition to all other
16 remedies provided for in any other cause of action pursuant to California Civil
17 Code §1788.32.
18 b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
19 §1788.30(b), which are cumulative and in addition to all other remedies
20 provided for in California Civil Code §1788.32; and
21 c. An award of costs of litigation and reasonable attorney's fees pursuant to Cal.
22 Civ. Code §1788.30(c).
23 d. An award of statutory damages of \$500.00 pursuant to 47 U.S.C. §227(b)(3)(B)
24 for each and every violation.
25 e. Pursuant to 47 U.S.C. §227(b)(3)(A), ~~injunctive relief prohibiting such conduct~~
26 in the future.

27 Dated: May 2, 2016

28 By:

 SAGARIA LAW, P.C.

Scott Sagaria, Esq.

Scott Johnson, Esq.


Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

1 Plaintiff hereby demands trial of this matter by jury.

2
3 Dated: May 2, 2016

SAGARIA LAW, P.C.


Scott Sagaria, Esq.

Scott Johnson, Esq.

Attorneys for Plaintiff

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

ATTACHMENT CV-5012

CASE NUMBER:

16CV294629**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions,
you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Maureen Folan Department: 8

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: AUG 30 2016 Time: 3:30pm in Department: 8

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- ADR can save time. A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ADR can save money. Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ADR provides more participation. Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ADR provides more control and flexibility. Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ADR can reduce stress. ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-